

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

HOWARD DELACRUZ-BANCROFT,

Plaintiff,

vs.

FIELD NATION LLC, SPARTAN
COMPUTER SERVICES / NATIONAL
SERVICE CENTER AKA SCS/NSC, and
JACK IN THE BOX INC.

No.: 1:23-CV-00023-JB-KK

Defendants.

**RESPONSE IN OPPOSITION TO PLAINTIFF'S REQUEST FOR ADDITIONAL TIME
TO RESPOND TO DEFENDANT'S MOTIONS TO DISMISS AND MOTION TO
COMPEL ARBITRATION**

Defendant Jack in the Box, Inc. hereby responds in opposition to Plaintiff's Response to Order to Show Cause and Request for Additional Time to Respond to Defendant's Motions to Dismiss and Motion to Compel Arbitration:

1. Jack in the Box Inc. filed its Motion to Dismiss on December 20, 2022. The motion has been pending for more than a year without a response from Plaintiff demonstrating why the Court should not dismiss his claims against Jack in the Box.

2. Following removal of this lawsuit to this Court, Jack in the Box filed a Notice of Completion of Briefing on April 27, 2023. The Notice informed both the Court and Plaintiff that Plaintiff had failed to respond to Jack in the Box's Motion to Dismiss.

3. Despite providing notice that Plaintiff had failed to respond to Jack in the Box's Motion to Dismiss, in the intervening eight months, Plaintiff has still not responded to Jack in the

Box's Motion to Dismiss.

4. On January 19, 2023, the Court entered an Order to Show Cause wherein it ordered Plaintiff to show cause why the Court should not dismiss his claims against Jack in the Box no later than February 2, 2024.

5. Plaintiff did not respond to the Court's Order to Show cause before February 2, 2024. As a result, the Court should deny Plaintiff's request for additional time and dismiss Plaintiff's claims against Jack in the Box.

6. In the Response Plaintiff untimely filed on February 5, 2024, he does not make any reference to Jack in the Box's Motion to Dismiss focusing instead solely on the Motions filed by Jack in the Box's co-defendants. As Plaintiff has made no showing related to Jack in the Box's Motion to Dismiss, the Court should deny Plaintiff's request for additional time as it relates to Jack in the Box's Motion to Dismiss and grant Jack in the Box's Motion to Dismiss.

7. Plaintiff has had more than a year to respond to Jack in the Box's motion. Plaintiff has had more than nine months to respond to the motion after Jack in the Box notified the Court and Plaintiff of his failure to respond. Plaintiff is not entitled to, and has not shown good cause and/or excusable warranting, additional time to respond to Jack in the Box's motion.

8. Finally, Plaintiff's argument his newly-requested extension of time would not prejudice Defendants is without merit. Defendants have been forced to monitor this litigation for over a year after moving to dismiss Plaintiff's claims. Defendants would be forced to expend additional resources litigation a motion that is presently more than a year stale if Plaintiff is permitted to substantively respond to the same.

9. Plaintiff failed to respond to Jack in the Box's Motion to Dismiss, as required by the Federal Rules of Civil of Procedure. Even after Jack in the Box advised Plaintiff of his failure,

he failed to respond to Jack in the Box's Motion to Dismiss, as required by the Federal Rules of Civil Procedure. Plaintiff failed to timely respond to the Court's Show Cause Order. Even in light of the latitude afforded to *pro se* parties, it is time the Court taken action on Jack in the Box's Motion to Dismiss by granting the 14-month-old motion without providing Plaintiff additional time to drag this litigation out even longer.

DATED this the 7th day of February 2024.

Respectfully submitted:

By: /s/ Christopher R. Jones

Christopher R. Jones, #152060

Jaime L. Wiesenfeld, # 21825

GORDON REES SCULLY MANSUKHANI, LLP

555 Seventeenth St., Suite 3400

Denver, CO 80202

Telephone: (303) 534-5160

Facsimile: (303) 534-5161

crjones@grsm.com

jwiesenfeld@grsm.com

Attorneys for Jack in the Box Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served through the Court's e-filing system upon counsel of record and to *pro se* Plaintiff as set forth below on this the 7th day of February 2024:

Howard DeLaCruz-Bancroft
P.O. Box 1985
Albuquerque, NM 87192
comvetrix@gmail.com
webglobix@gmail.com
Plaintiff

Jay J. Athey
R. Shawn Oller
LITTLER MENDELSON P.C.
201 Third Street NW, Suite 500
Albuquerque, NM 87102
JAthey@littler.com

and

2425 East Camelback Rd., Ste. 900
Phoenix, AZ 85016
soller@litter.com
Attorneys for Defendant Field Nation, LLC

Andrew J. Simons
Alex G. Elborn
SUTIN, THAYER & BROWNE, P.C.
P.O. Box 1945
Albuquerque, NM 87103-1945
ajs@sutinfirm.com
age@sutinfirm.com
Attorneys for Defendant NewBold Corporation
On behalf of its division,
National Service Center

/s/ Karla Freeman